

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLES RAY HICKS,
Petitioner,

v.

JOHN E. WETZEL, Secretary,
Pennsylvania Department of Corrections;
ROBERT GILMORE, Superintendent of
the State Correctional Institution at Greene;
and MARK GARMAN, Superintendent of
the State Correctional Institution at
Rockview,
Respondents.

No. 1:17-CV-1969

(Chief Judge Conner)

THIS IS A CAPITAL CASE

PETITIONER'S STATUS REPORT

Petitioner, Charles Ray Hicks, through counsel, respectfully provides this Court with the following status report as required by this Court's Order of November 30, 2017 (Doc. 3):

1. On November 30, 2017, this Court granted Mr. Hicks' motion for leave to proceed *in forma pauperis*, appointed the Capital Habeas Unit of the Federal Public Defender Office for the Middle District of Pennsylvania to represent Mr. Hicks in proceedings challenging his convictions and sentence of death under Section 2254, and ordered counsel to file a status report apprising the Court of the

procedural posture of Mr. Hicks' state court proceedings and any other pertinent matters on or before May 29, 2018 and every 45 days thereafter. (Doc. 3.)

2. On January 18, 2018, Pennsylvania Secretary of Corrections John Wetzel signed a warrant for Mr. Hicks' execution. On February 6, 2018, Mr. Hicks filed a *Pro Se Motion for Post Conviction Collateral Relief*, and his direct appeal counsel, the Monroe County Public Defenders Office, filed an *Emergency Motion for Stay of Execution* on his behalf in the Monroe County Court of Common Pleas.

3. On February 12, 2018, the Court of Common Pleas entered an order granting Mr. Hicks leave to proceed *in forma pauperis*, staying his execution through the conclusion of all PCRA proceedings, appointing James Swetz, Esquire, to represent him in his PCRA proceedings, and granting Mr. Swetz leave to file an Amended PCRA petition on or before March 22, 2018. On March 19, 2018, the Court of Common Pleas granted Mr. Swetz's request for an enlargement of time in which to file an Amended PCRA petition until July 22, 2018.

4. Since their appointment in November 2017, undersigned federal habeas counsel have been diligently reviewing the prior record in Mr. Hicks' case; have begun to conduct the exhaustive extra-record investigation necessary to determine what additional claims should be developed; and are monitoring the status of the state court litigation. Until undersigned counsel have completed their extra-record investigation to determine the available claims, counsel cannot competently advise

Mr. Hicks about which have been exhausted, which need to be exhausted, and which involve issues in which exhaustion is futile, and what forum(s) are the most appropriate for him to proceed.

Respectfully submitted,

s/Kelly D. Miller

KELLY D. MILLER, ESQUIRE

Asst. Federal Public Defender

Federal Public Defender for the

Middle District of Pennsylvania

Capital Habeas Unit

100 Chestnut Street, Suite 300

Harrisburg, PA 17101

(717) 782-3843

(kelly_miller@fd.org)

Dated: May 29, 2018

CERTIFICATE OF SERVICE

I, Kelly D. Miller, hereby certify that on this date I caused the foregoing document to be served on the following person at the location and in the manner indicated below, which satisfies the requirements of the Federal Rules of Civil Procedure:

VIA FIRST CLASS MAIL

E. David Christine, Jr.
District Attorney
Monroe County District Attorney's Office
610 Monroe Street, Suite 126
Stroudsburg, PA 18360

/s/ KELLY D. MILLER
KELLY D. MILLER, ESQUIRE
Asst. Federal Public Defender
PA Bar #307889
100 Chestnut Street, Suite 300
Harrisburg, PA 17101
Tel: 717-782-3843
Fax: 717-782-3966
kelly_miller@fd.org

Dated: May 29, 2018